DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 7/24/2008 has been received. Claims 1-3, 5, 9, 11, and 12 are pending. It is noted that the applicant added new claims 12 and 13. Claim 13 is drawn to a non-elected invention and therefore has not been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles (U.S. 2,378,493) in view of Nelson (U.S. 3,147,489). Miles discloses an optical device comprising a pair of lens assemblies. Each lens assembly includes an eye cup 11. A link 10 connects the lens assemblies to each other. Each of the lenses has a patch/belt-like portions14a and 14b having less light transmittance than the lens. The belt-like portions may be integral with the lens material or may consist of separate elements attached to or disposed adjacent the surface of the lens or positioned between elements of the lens (Column 2, 22-27). The patches/belt-like

portions may for some purposes be entirely or substantially opaque (Column 3, 57-58). The lens assemblies have a transverse direction horizontally extending across the head and a longitudinal direction vertically extending orthogonally to the transverse direction. The lens assemblies are divided into an intermediate section (patches/belt-like portions) extending across the lens at a substantially middle level as viewed in a vertical direction, an upper section lying above the intermediate section and a lower section lying below the intermediate section wherein the intermediate section presents a see-through clarity lower than those presented by the upper section and the lower section. Miles does not explicitly state how the see-through clarity is specified, but since the intermediate sections may be opaque that would consequently give the intermediate section a total luminous transmittance of substantially 0%. The applicant provides no criticality for why each of the intermediate sections should have a dimension in the range of 2 to 10 mm. Although Miles does not specify the dimensions of his intermediate sections, it would have been obvious that his intermediate sections would have similar dimensions so that they would not take over too much lens space. Miles also does not show intermediate sections which extend from one side of a frame portion of a eye cup and then terminating at an opposite side of the frame portion of the same eye cup. However, it would have been obvious to extend Miles's intermediate sections entirely across the eye-cup. Modifying the intermediate section of Miles would in no way change the function of the eyewear and therefore would not destroy the reference. The intermediate sections can be symmetrically configured about a vertical axis located between each lens (Page 3, Column 1, 58-60).

However, Miles is missing an eye skirt located around each eye cup and a strap to put around the head of the wearer. Nelson discloses safety goggles having a pair of lens assemblies, each lens assembly including an eye cup, each eye cup including a skirt 12. When the goggle is held in close contact with a user's face, the skirt would help to form a seal, which would keep water out of a user's eye. A strap 19 is used to secure the goggles to the head of the wearer. Miles and Nelson both disclose forms of eyewear. Although they don't specifically state that they can be worn while swimming, they are both completely capable of being worn while swimming. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the goggles of Nelson to modify the optical device of Miles in order to provide eyewear that can provide alignment to the wearer during sporting activities.

Response to Arguments

Applicant's arguments filed 7/24/2008 have been fully considered but they are not persuasive.

Applicant submits that modifying Miles using the skirt of Nelson does not teach all of the features of claim 1. The applicant argues that the eye skirt of Nelson is not designed for water use and that neither Miles nor Nelson teach swimming goggles. The applicant is arguing a functional feature of the invention. The eyewear of Miles and Nelson are fully capable of being worn while swimming. The applicant has not amended claim 1 to further define the invention in order to overcome the prior art.

Applicant submits that it is error to conclude that both intermediate sections can extend between the frame portions. The applicant argues that it is error for the examiner to allege that the function of the optical device of Miles is not altered when the patches are made to extend completely across the lens. However, it would have been obvious to extend Miles's intermediate sections entirely across the eye-cup. Modifying the intermediate section of Miles would in no way change the function of the eyewear and therefore would not destroy the reference. It is also noted that Miles states that his patches may be rotated, or otherwise adjustable in position (Page 3, Column 1, 58-60). Therefore the patches can be moved to any desired position on the lens. The intermediate sections can be symmetrically configured about a vertical axis located between each lens.

The applicant has not amended the claims to further define the structure of the invention. The prior art reads on the claim language as presented by the applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA J. TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/
Examiner, Art Unit 3765

/Gary L. Welch/

Supervisory Patent Examiner, Art Unit 3765